IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.378 OF 2003

IN

SUMMARY SUIT NO. 692 OF 2003

Goldstar Electronics Pvt.Ltd .. Plaintiff

versus

Phillips India Limited .. Defendant

...

Mr.Shailesh Shah i/b Bankim Desai for Plaintiff.

Mr.S.V.Doijode i/b Doijode & Co for Defendant.

CORAM : D.G. KARNIK, J

DATED : 19th January 2005.

P.C:-

1. Heard learned counsel for the plaintiff. The plaintiff sues for recovery of the price of the goods sold to the defendant. The supplies were made between the period July, 1998 and September, 1999. The suit is filed on 29th October, 2002 i.e. after a period of three years even from the date of last supply. The plaintiff pleads that the defendant had acknowledged

the liability vide letter Exhibit AA (page 40 to the plaint). The letter is dated 19th October, 1999 and the suit is filed even after the period of three years from the said date. It is contended that though the letter bears the date as 19th October, 1999, the letter is in fact dated 19th November, 1999. This would require evidence and one cannot say that the defence of limitation raised by the defendant is vexatious.

2. The defendant has also raised another defence. The goods sold were black and white TV sets. The plaintiff was purchasing black and white picture tubes from a third party manufacturer namely Samtel and fitting them to the TVs supplied to the defendant. The defendant has pleaded that it was agreed that in the event the plaintiff did not pay the price of the black and white picture tubes to the third party manufacturer Samtel the defendant would be entitled to pay for the picture tubes and deduct the amount paid from the price payable to the plaintiff. According to the defendant, the plaintiff was required to pay to the Samtel and after deducting the money so paid to Samtel no money is due to the plaintiff. The original order was oral. The arrangement which the defendant

pleads of being required to pay to Samtel and therefore was also oral. The defence raised by the defendant cannot be said to be frivolous or moonshine.

3. In the circumstances, the defendant is granted unconditional leave to defend the suit. The suit is transferred to the list of commercial causes. The defendant to file the written statement within a period of five weeks.

D.G.KARNIK, J